

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of  
Policy and Rules Concerning the  
Interstate, Interexchange Marketplace

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CC Docket No. 96-61  
(Phase II)

Implementation of Section 254(g) of the  
Communications Act of 1934, as amended

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**NYNEX COMMENTS**

**INTRODUCTION AND SUMMARY**

The NYNEX Telephone Companies<sup>1</sup> ("NYNEX") hereby respond to Sections of the Notice of Proposed Rulemaking ("NPRM") in this proceeding for which the Commission has invited comment by April 25, 1996 ("Phase II"). Specifically, NYNEX addresses Sections III, VII-VIII of the NPRM in which the Commission focuses on: detariffing the interstate, interexchange services of non-dominant long distance carriers (Section III); incumbent interexchange carrier price collusion and residential service pricing (Section VII); and regulatory restrictions addressing the bundling of customer premises equipment ("CPE") with telecommunications service offerings (Section VIII).

As discussed below, NYNEX supports the detariffing of long distance services for all carriers (Section I). We further demonstrate that this must be applied equally to Bell

<sup>1</sup> The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

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Operating Company (“BOC”) long distance services to fully effectuate the competitive environment that the Congress and the Commission seek to implement (Section II).

NYNEX also urges that non-dominant long distance carriers, as well as other carriers, should be permitted to bundle CPE with interstate, interexchange services.

# **I. NYNEX SUPPORTS THE DETARIFFING OF LONG DISTANCE SERVICES FOR ALL CARRIERS**

NYNEX concurs with the Commission’s tentative conclusion<sup>2</sup> that, given the current domestic, interexchange market, the Telecommunications Act of 1996 (“1996 Act”) requires the Commission to forbear from requiring non-dominant interexchange carriers to file tariffs for domestic services.<sup>3</sup> The Commission should extend this treatment to all interexchange service providers, including the BOCs (see infra, Section II). As the Commission sets out in detail, it has already established the predicate for the proposed forbearance in a prior series of orders, and the 1996 Act provides the legal vehicle for effectuating that action.<sup>4</sup>

First, tariffing is not necessary to ensure rates that are just and reasonable, and not unjustly or unreasonably discriminatory. Since non-dominant interexchange carriers lack

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<sup>2</sup> See NPRM at ¶ 19.

<sup>3</sup> NYNEX also supports the immediate detariffing of bundled offerings which include both domestic and international services. See NPRM at ¶ 33. These bundled offerings are responsive to customer needs and tariffing is not necessary to protect ratepayers and the public interest.

<sup>4</sup> See NPRM at ¶¶ 21-27; Section 401 of 1996 Act, adding Section 10(a) of Communications Act. Prior to the 1996 Act, with respect to the Commission’s tariff filing forbearance policy for non-dominant carriers, the U.S. Court of Appeals stated that it had no “quarrel with the Commission’s policy objectives,” but the Communications Act did not yet give the Commission authority to adopt such a policy. AT&T v. FCC, 978 F.2d 727, 736 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993).

market power, these objectives can be met through market forces and administration of the complaint process. Indeed, tariff regulation would counterproductively inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends.<sup>5</sup>

Second, tariffing is not necessary for the protection of consumers of interexchange services. Competition will effectively regulate the prices and practices of interexchange service providers, especially as BOCs are allowed into the marketplace.<sup>6</sup>

Third, removing tariff filing requirements applying to non-dominant interexchange carriers is consistent with the public interest. Such forbearance will promote competition and deter price coordination, which can threaten competitive benefits (*see infra*, Section II).<sup>7</sup>

## **II. PERMITTING RAPID ENTRY OF BOCs INTO THE INTEREXCHANGE MARKETPLACE ON AN UNTARIFFED BASIS WILL ADVANCE THE COMMISSION'S PRO-COMPETITIVE GOALS**

In Section VII of the NRPM, the Commission addresses two issues: (1) whether the interexchange market is currently characterized by “oligopolistic price coordination,” and (2) whether and how to encourage domestic interstate, interexchange carriers to provide “optional calling plans for low-income consumers” in order to promote universal service.<sup>8</sup> NYNEX addresses only the first issue here because, as the Commission

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<sup>5</sup> *See* NPRM at ¶ 28 & n. 76.

<sup>6</sup> *See* NPRM at ¶ 29.

<sup>7</sup> *See* NPRM at ¶¶ 30-31.

<sup>8</sup> NPRM at ¶¶ 80-83.

observes, the second issue has been properly assigned to the Universal Service proceeding for comment and resolution.<sup>9</sup>

With respect to price coordination, there is clearly substantial evidence of record that the interexchange market has not been price competitive.<sup>10</sup> However, the issue for this proceeding is not whether price collusion has occurred in this market but, rather, what measures should the Commission take now to further the public interest. The NPRM indicates the Commission's view that the "best solution" is to "allow competitive entry in the interstate interexchange market by facilities-based BOCs and others" in accordance with the 1996 Act.<sup>11</sup> NYNEX agrees, and is rapidly moving to establish its capability to provide such services to the public.

The Commission also points to its consideration of detariffing for interstate services in this proceeding as an important means to "discourage price coordination."<sup>12</sup> As above, NYNEX strongly favors detariffing. Importantly, if the Commission determines to permit or order the "detariffing" of long distance service, it must apply the same regulatory regime to the BOCs. Failure to do so, thereby requiring interstate tariffs

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<sup>9</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (released March 8, 1996) (NPRM ¶ 83).

<sup>10</sup> See, e.g., Further Opposition Of Bell Atlantic Corporation, et al To AT&T's Motion For Reclassification As A Non-Dominant Carrier, In The Matter of Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorization Therefor, CC Docket No. 79-252, filed June 9, 1995.

<sup>11</sup> NPRM at ¶ 81.

<sup>12</sup> Id.

only for the BOCs, would negate completely the Commission's prime objective, *i.e.*, introducing "competitive entry" by the BOCs.

As it sorts through the comments of incumbent carriers, the Commission must understand that the BOCs will not be able to compete effectively if subjected to a more burdensome regulatory regime than all other entities, given the ability of these entities "to ascertain their competitors' [BOCs] interstate rates and service offerings from publicly available tariffs filed with the Commission."<sup>13</sup> We anticipate that incumbent long distance carriers will attack this simple truth with the invocations of traditional regulatory rhetoric: "bottleneck facilities," "cross-subsidized rates," "bundled services," and more. The response to all of these time-worn arguments is two-fold: first, there is no realistic possibility of the BOCs asserting market power in long distance markets; and second, Congress has already determined the specific and disparate conditions for BOC entry into long distance service.<sup>14</sup> No further regulatory handicapping is required or advisable.

### **III. THE COMMISSION SHOULD PERMIT NON-DOMINANT LONG DISTANCE CARRIERS, AS WELL AS OTHER CARRIERS, TO BUNDLE CPE WITH INTERSTATE, INTEREXCHANGE SERVICES**

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<sup>13</sup> *Id.*

<sup>14</sup> Sections 271-272 of Communications Act. Importantly, these specific legislative preconditions apply to BOC provision of "in-region" long distance services. While NYNEX supported the Commission's proposal in February to permit BOC entry into "out-of-region" markets subject to the limitations already imposed on other LEC-affiliated long distance carriers, as a quick, first regulatory step (CC Docket No. 96-21), we strongly urge the removal of the specific limitations on BOC out-of-region long distance service in Phase I of this proceeding. Simply stated, these limitations are contrary to legislative judgment and pro-competitive policy.

The Commission tentatively concludes that it should amend Section 64.702(e) of its rules to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services.<sup>15</sup> NYNEX concurs with this tentative conclusion provided that the benefit of this regulatory relief is extended to all carriers.

The Commission's CPE unbundling policies have had a very positive effect on the competitive provision of CPE. They have expanded customer choice and fostered the development of new technologies. They have been applied to all common carriers in a non-discriminatory manner, and care should be taken to ensure this non-discriminatory treatment continues. BOCs are demonstrably non-dominant carriers in the provision of domestic, interstate, interexchange services, and thus the BOCs should be treated similar to the incumbent interexchange carriers in this area.<sup>16</sup>

Notably, equipment at a customers premises is rarely, if ever, used exclusively for interstate communications. It is nearly impossible to restrict or limit a customer's use of their equipment to either interstate or intrastate. Accordingly, if the FCC's proposed rule amendment were limited to incumbent interexchange carriers, such a carrier could order a local channel from the BOC and bundle CPE for its end user. However, if the end user ordered the same circuit directly from the BOC, the BOC could not bundle the CPE. Such an asymmetrical, unfair and artificial constraint on competition must be avoided.

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<sup>15</sup> NPRM at ¶ 88.

<sup>16</sup> See NYNEX Comments in Phase I of this proceeding and Section II, *supra*.

BOC entry into the interexchange marketplace must be placed on an evenhanded basis in regard to CPE bundling.<sup>17</sup>

The Commission has also asked for comment on whether it should require interexchange carriers offering bundled packages of CPE and interstate, interexchange services to continue to offer separately, unbundled services on a nondiscriminatory basis.<sup>18</sup> NYNEX supports such a requirement. Carriers should be required to offer both unbundled and bundled services since this will provide customers with a choice of equipment vendors for CPE. Additionally, this will further advance the Commission's pro-competitive policies in the equipment marketplace. All interface specifications should be disclosed using existing industry guidelines and procedures.<sup>19</sup> All network disclosure rules should apply regardless of whether the CPE is bundled or unbundled. This will ensure that no carrier uses proprietary interfaces in a way that detracts from another carrier's ability to provide the necessary CPE.

#### **IV. CONCLUSION**

For the reasons stated, the Commission should remove tariffing and CPE unbundling requirements from all carriers' provision of domestic, interstate,

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<sup>17</sup> See NPRM at ¶ 90.

<sup>18</sup> NPRM at ¶ 89.

<sup>19</sup> The Commission should consider reducing the time frames required for network disclosure commensurate with the increased speed at which technology is advancing.

interexchange services. To maximize the realization of its pro-competitive policies, the Commission should permit rapid entry of BOCs into that marketplace.

Respectfully submitted,

The NYNEX Telephone Companies

By: Campbell L. Ayling

Campbell L. Ayling

Donald C. Rowe

1111 Westchester Avenue

White Plains, New York 10604

Telephone (914) 644-6306

Their Attorneys

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